SB CIVIL MISC. APPEAL NO. 1922/2006
(MITHULAL AGRAWAL v SMT. INDRA PACHISIYA & ORS.)

HON'BLE MR. JUSTICE R.S. CHAUHAN

DATE OF ORDER:

Mr. S.C. Gupta for the appellant.
Mr. Bharat Saini for the respondents.

The plaintiff-appellant has challenged the order dated 27.5.06 passed by the Addl. District Judge No. 2, Jaipur City, Jaipur, whereby he has rejected the stay application filed by the plaintiff-appellant, but has accepted the counter stay application filed by the defendant-respondents. The plaintiff-appellant has been restrained from causing any interference in the construction raised by the defendant-respondents on the disputed land.

The common wall between plot No. B-6/352, a plot owned by the plaintiff and plot no. B-6/353, a plot owned by the defendant, is the bone of contention between the two neighbors. The plaintiff's case is that he purchased his plot from the J.D.A., through a registered sale-deed dated 21.8.2001. The adjacent plot was initially allotted to one Rajendra Prasad Agrawal, but later on he sold it to one Rajendra Kumar Kala, who subsequently transferred the plot to Smt. Indira Pachisiya, the defendant No.1. The plaintiff further

claimed that after purchasing the said plot he built a boundary wall around his plot. However, after Smt. Indira Pachisiya bought the plot, she, without taking prior consent of the plaintiff, demolished the said wall. When the plaintiff protested to her, she refused to listen to his pleas. Therefore, the plaintiff filed a suit for injunction against the defendants. Alongwith the suit, the plaintiff filed an application for temporary injunction under Order 39 Rule 1 and 2 praying therein that during the pendency of the suit the defendants may be restrained from demolishing the remaining common wall and from raising any construction on the common wall.

The defendants, on their part, filed a reply to the said stay application and pleaded that the common wall is a load bearing wall. And since the said wall was not constructed properly, they need to reconstruct the same. The defendants also filed an application for temporary injunction. After hearing both the parties, the learned Judge while dismissing the application filed by the plaintiff for temporary injunction, granted the temporary injunction in favour of the defendants as aforementioned. Hence, this appeal before this Court.

On 7.7.06 when the case was listed before the Court, the

learned counsel for the appellant, Mr. S.C. Gupta, vehemently argued that the defendants do not have any approved map for the construction of the house, that they have demolished the room constructed by the plaintiff in the back of the plot and the defendants are planning to raise a construction in violation of the building bye-laws promulgated by the J.D.A. The contention of the appellant were strenuously opposed by the counsel for the respondents. Since it was felt necessary that the physical reality of the plots should be discovered, vide order dated 7.7.06 this Court appointed Mr. J.P. Goyal, Advocate, as Commissioner to inspect the site and to submit his report on the following points; firstly, whether there are approved maps of both the plots, which clearly reveal the setback each of the plot is supposed to have while carrying out the construction of the house? Secondly, whether the boundary wall between two plots is a common wall or not? Thirdly, whether any setback is required from the common boundary wall or not? Fourthly, whether while demolishing the common boundary wall between two plots, the room construction by the plaintiff-appellant in plot No. B-6/352 has been demolished or not by the defendant-respondent? The learned Commissioner subsequently submitted his report, which was taken

on record vide order dated 26.7.06.

Mr. S.C. Gupta, learned counsel for the appellant, has vehemently argued that the defendants would be constructing their house in violation of the building bye-laws. According to him the defendants are not planning to leave any setback as required by the bye-laws. Moreover according to him, the defendants are required to leave some setback from the side of the common boundary wall. But, they are not planning to do so. According to the learned counsel, the learned Judge has permitted the defendants to raise the construction in violation of the law.

On the other hand, Mr. Bharat Saini, the learned counsel for the respondents, has argued that according to the building bye-laws setbacks are not supposed to be left on all the four sides of the house. In small plots, the setbacks are to be left only in the front side, the back side and one of the sides. Since the plots are small in size, the construction of both the houses adjoining each other is supposed to be on the common boundary wall. According to the said regulations, no setback is to be left from the side of the common boundary wall. He has further argued that the common boundary wall

constructed by the plaintiff was not strong enough to withstand the constructions of two walls-one of his own house and the other of the plaintiff's house. Therefore, in order to build a stronger common boundary wall he has demolished it and he plans to re-build it as a strong common boundary wall. He has further argued that so far no construction has started on the plot. Therefore, the apprehension entertained by the plaintiff-appellant that the defendant will not leave any setback in accordance with the building regulations is unfounded.

We have heard both the learned counsels for the parties and perused the impugned order as well as the report submitted by the Commissioner.

Both, according to the Building Regulations and according to the Commissioner's report, no setback is required to be left by the defendant near the common boundary wall. Hence, one wall of both the houses on plots No. 352 and 353 would have to be constructed on the common boundary wall. Therefore, the first contention raised by the appellant that the defendant is supposed to leave some setback on the side of the common boundary wall is meritless.

According to the Commissioner's report no construction

work has started on plot No. 353, belonging to the defendant. Since no construction work has started on the said plot, the appellant's anxiety that the defendant would construct his house in violation of the bye-laws is pre-mature and is baseless. Infact, a perusal of the application filed by the appellant under Order 39 Rule 1 and 2 clearly reveals that the appellant did not mention this apprehension in his application. The appellant cannot be permitted to travel beyond his plaint at this juncture. The entire case of the appellant rested on the ground that the common boundary wall has been demolished by the defendant, that the defendant demolished the wall without his consent and that the defendant has not compensated him for the loss suffered by him. Since the appellant had not agitated the point of setback before the learned trial court, he cannot be permitted to raise a new plea before this Court.

According to the building bye-laws, the defendant has a right to construct one wall of his house on the common boundary wall. Therefore, the defendant is certainly within his rights to raise a construction on the common boundary wall. As long as the defendant raises a construction in accordance with the building bye-laws, the appellant cannot interfere with the said construction. Therefore, the

learned Judge was certainly justified in restraining the appellant from interfering with the construction being raised by the defendants.

Of course the defendant is legally bound to raise the constructions absolutely in accordance with the building bye-laws. It is certainly hoped that as a good neighbor he would settle his disputes about the compensation, if any, to be paid to the appellant and would not take any steps to harm the interest of the appellant. While raising the wall on the common boundary wall, the defendant is expected to keep in mind the needs of the appellant. It is hoped that both the neighbors would learn to live peacefully with each other. But, as far as the impugned order is concerned, the order is certainly valid and legal. In the result, there is no force in this appeal. It is, hereby, dismissed.

(R.S. CHAUHAN)J.

MRG.